

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant(s): Young et al.
Appl. No.: 10/070,799
Conf. No.: 9555
Filed: September 16, 2002
Title: METHOD FOR IMPROVING THE SKIN AND COAT OF PETS
Art Unit: 1615
Examiner: N.S. Levy
Docket No.: 115808-338

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF

Sir:

I. INTRODUCTION

Appellants submit Appellants' Reply Brief in response to the Examiner's Answer dated June 24, 2008 pursuant to 37 C.F.R. § 41.41(a). Appellants respectfully submit the Examiner's Answer has failed to remedy the deficiencies with respect to the Final Office Action dated August 24, 2007 as noted in Appellants' Appeal Brief filed on April 8, 2008, for at least the reasons set forth below. Accordingly, Appellants respectfully request that the rejections of pending Claims 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24 and 30-33 be reversed.

II. THE REJECTION OF CLAIMS 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24 AND 30-33 UNDER 35 U.S.C. § 103(a) SHOULD BE REVERSED BECAUSE THE EXAMINER HAS NOT ESTABLISHED A PRIMA FACIE CASE OF OBVIOUSNESS WITH RESPECT TO THE CITED REFERENCES

Appellants respectfully request that the Board reverse the rejections of Claims 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24 and 30-33 under 35 U.S.C. §103(a) because the Examiner has still failed to establish a *prima facie* case of obviousness with respect to the cited references. Appellants respectfully submit that, even if properly combinable, the cited references fail to disclose or suggest all of the claimed elements of the present invention.

Independent Claims 1, 6, 13, 20-24 and 30-31 recite, in part, a method comprising feeding a pet a food composition comprising a nutritional agent comprising a prebiotic that comprises about 0.1% to about 20% by weight of a food composition, a probiotic micro-organism that comprises about 0.5% to about 20% by weight of a food composition, and a long-chain fatty acid. Appellants respectfully submit that, even if combinable, all of the claimed elements are not taught or suggested by the cited references.

For example, *Shields*, *Cavadini*, *Marsh*, *Lowe '88*, *LABDIET '98*, and *Matsuura* all fail to disclose or suggest Appellants' claimed methods comprising the step of administering a nutritional agent including a prebiotic that comprises about 0.1% to about 20% by weight of a food composition, a probiotic micro-organism that comprises about 0.5% to about 20% by weight of a food composition, and a long-chain fatty acid as required, in part, by the present claims.

In fact, *Lowe '88*, *Marsh*, *Shields*, *LABDIET '98*, *Matsuura* and *Cavadini* do not even teach or suggest any methods for improving or maintaining the coat of a pet in need of same using a nutritional agent that comprises a prebiotic, a probiotic micro-organism and long-chain fatty acids at the levels detailed above, as required by the present claims. *Lowe '88*, *Marsh*, *Shields*, *LABDIET '98*, *Matsuura* and *Cavadini* all fail to recognize a problem that Appellants' invention solves or advantages that Appellants' invention has. In fact, the Examiner has failed to show any evidence in the cited references regarding improving or maintaining the skin and coat system of a pet in need of same or the step of feeding or administering to the pet a nutritional composition including a prebiotic, a probiotic micro-organism and a long-chain fatty acid for

improving or maintaining the skin and coat system. *Lowe '88*, *Marsh*, *Shields*, *LABDIET '98*, *Matsuura* and *Cavadini* also provide no teaching, guidance or experiments as to methods for improving or maintaining the skin and coat system of a pet using a nutritional agent including a prebiotic that comprises about 0.1% to about 20% by weight of a food composition, a probiotic micro-organism that comprises about 0.5% to about 20% by weight of a food composition, and a long-chain fatty acid as Appellants have done. As a result, the cited references fail to achieve a reasonable expectation of success in accordance with the present claims.

The Examiner asserts, however, that the prior art as cited feeds non-specified prebiotics, probiotics, and fatty acids to the same animals as Appellants' and that *Shields* repeatedly recites maintaining healthy skin and coat with omega 3 and 6 fatty acids, chicory root, inulin sources, zinc and probiotic lactobacilli feed as in Example 5 of *Shields*. See, non-final Office Action, page 3. Appellants respectfully disagree with the Examiner for the following reasons.

Appellants have established above that each of the references is deficient with respect to the present claims. Each reference fails to disclose or suggest any methods for improving or maintaining the coat of a pet in need of same using a nutritional agent that comprises a prebiotic, a probiotic micro-organism and long-chain fatty acids at the levels detailed above, as required by the present claims. Further, contrary to the Examiner's assertion regarding *Shields*, Appellants submit that when *Shields* actually refers to skin and hair coat problems in pets, *Shields* only teaches the use of fatty acids to combat the problem, rather than a disclosure of prebiotics as required by the claims. Specifically, *Shields* states:

Skin and hair coat problems have been noted in several breeds including the Chinese Shar Pei, the Chow Chow and the Miniature Poodle. This problem is also accounted for in the subject breed-specific formulations. In addition to a generous supply of vitamins (B-vitamins, vitamin A) and minerals (zinc and copper in proteinate form which is more available for deposition in hair), the Group Specific Formulas incorporate the latest in fatty acid supplementation technology available today. This involves a careful balance of total omega-6 and omega-3 fatty acids (ratio 4-11) as well as supplementation of a balance of short and long chain compounds in these major classifications to facilitate inflammation management. This is the reason for the supplementation of evening primrose oil and salmon oil in addition to canola oil in the subject formulations. This blend provides insurance for pets which may have low enzyme activities.

See, *Shields*, col. 10, lines 36-48 (emphasis added).

Moreover, regardless of what the Examiner asserts regarding *Shields*' disclosure of prebiotics, the Examiner still admits that *Shields* fails to disclose or suggest the specific prebiotic

range of the present claims. See, non-final Office Action, page 2. As discussed previously, Appellants' Examples establish that when adding prebiotics into a pet food composition at the claimed ranges, numerous benefits arise such as, for example, increased coat shininess, coat softness, skin hydration score, skin elasticity, reduced transepidermal water loss, reduced oxidative stress, reduced inflammation, and reduced dandruff. See, specification, page 9, lines 29-34; page 10, lines 25-31, and page 12, lines 1-3 and 30-33. Therefore, Appellants establish non-obvious and unexpected results distinguishing the present invention over the prior art.

The Examiner continues to allege that "*Shields* shows effective maintenance & improvement of health of skin & coat by feeding the inulin at 0.5% to 10%." See, Examiner's Answer, page 7, lines 12-14. However, Appellants respectfully disagree with the Examiner's characterization of *Shields*. In fact, at column 6, lines 47-51 of *Shields*, the very excerpt that the Examiner cites as disclosing inulin at 0.5% to 10% states that "the amounts thereof are sufficient to provide a crude fiber content ranging from 0.5 to 10%." (emphasis added). Therefore, Appellants respectfully submit that the "crude fiber" of *Shields* is not necessarily equivalent to "inulin" since there are many different kinds of fiber including, but not limited to, pectin, gum, mucilage, cellulose, hemicellulose and lignin.

For the reasons discussed above, the combination of *Shields*, *Lowe '88*, *Marsh*, *LABDIET '98*, *Matsuura*, and *Cavadini* does not teach, suggest, or even disclose all of the elements of the present claims, and thus, fails to render the claimed subject matter obvious.

Accordingly, Appellants respectfully submit that Claims 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24 and 30-33 are novel, nonobvious and distinguishable from the cited references and are in condition for allowance.

III. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the Final Office Action. Therefore, Appellants respectfully request that the Board of Appeals reverse the obviousness rejections with respect to Claims 1, 4, 6, 8, 10, 12, 13, 15-17, 19-24 and 30-33.

No fee is due in connection with this Reply Brief. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-338 on the account statement.

Respectfully submitted,

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